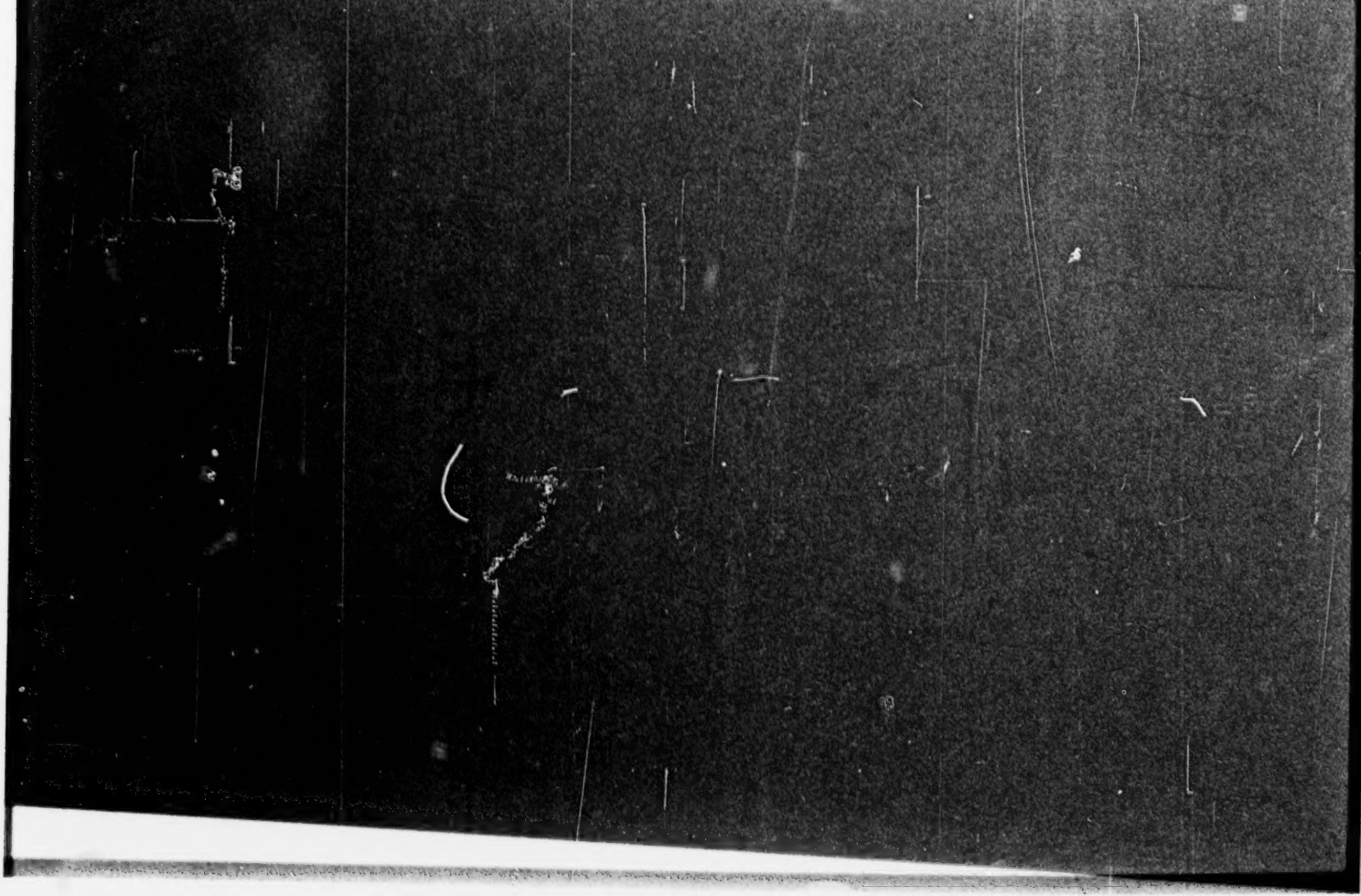

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee,	)	No.
vs.	)	74-1751
DAVID PATRICK WILLIS, Defendant-Appellant.	)	

OPINION

[Filed October 23, 1974, U.S. Court of Appeals, Emil E. Melfi, Jr., Clerk.]

Appeal from the United States District Court

For the Central District of California

Before: DUNIWAY and CHOY, Circuit Judges, and SMITH*, District Judge.

PER CURIAM:

Willis appeals from his conviction in a jury trial on eleven counts of knowingly making false statements in acquiring firearms from a licensed dealer in violation of 18 U.S.C. § 922(a)(6) and § 924(a). We affirm.

*The Honorable Russell E. Smith, United States District Judge for the District of Montana, sitting by designation.

In 1967, Willis was indicted in New York state court for criminally possessing a loaded firearm, a felony. Plea bargaining led to his pleading guilty to a lesser included offense of attempting to unlawfully possess a loaded firearm, still a felony with maximum sentence of 3½ years. During the bargaining the judge had said that if a plea were entered he would sentence Willis "as if it were a misdemeanor". The sentence imposed was nine months, which was duly served.

In 1969 Willis moved to California. Between 1971 and 1972 he bought eleven guns from a dealer in Orange County. Each time he filled in and signed the required state and federal forms. Question 8b on the federal form was:

> Have you ever been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (Note: the actual sentence given by the judge does not matter — a yes answer is necessary if the judge *could have* [printed in bold face] given a sentence of more than one year).

He answered this question, "No".

Willis contends, among other things, that §922(a)(6) is void for vagueness and unconstitutional as applied to him, and that his answer to question 8b was not false. We disagree.

We are not persuaded by appellant's claim that that portion of the statute referring to a crime punishable by more than one year and the "Note" to ques-

tion 8b did not give fair and adequate notice to him under his particular circumstances. Willis would have us analyze his answer to question 8b from his perspective after the plea bargain was struck. From that point on, Willis argues, under New York Law, the judge could not have imposed a sentence of more than one year. In reading question 8b and applying the statute, we find no reason to adopt that distorted perspective. It is true that the judge did agree that he would not sentence Willis to more than one year, but that agreement does not alter the fact that the crime was "punishable by imprisonment for a term exceeding one year," as specified by the statute, 18 U.S.C. § 922(d)(1), and question 8b.

"The question itself was forthright and direct, stating that it was concerned with conviction of a crime punishable by imprisonment for a term exceeding one year and that this meant the term which could have been imposed and not the sentence actually given." *Huddleston v. United States,* ..... U.S....., ... (1974). We fully agree with this statement as applied to the facts presented to us by Willis. His answer to question 8b was false in each instance.

Appellant's other contentions are without merit.

Affirmed.

APPENDIX "B"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee,	)	No.
vs.	)	74-1751
DAVID PATRICK WILLIS, Defendant-Appellant.	)	

ORDER

[Filed November 27, 1974, U.S. Court of Appeals, Emil E. Melfi, Jr., Clerk.]

Appeal from the United States District Court
For the Central District of California

Before: DUNIWAY and CHOY, Circuit Judges, and SMITH*, District Judge.

The panel as constituted in the above case has voted to deny the petition for rehearing. The petition for rehearing is denied.

*The Honorable Russell E. Smith, United States District Judge for the District of Montana, sitting by designation.

APPENDIX "C"

UNITED STATES DISTRICT COURT

FOR THE

CENTRAL DISTRICT OF CALIFORNIA

October 1973 Grand Jury

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	No. 13426
v.	)	CD
DAVID PATRICK WILLIS,	)	
Defendant.	)	

INDICTMENT

[18 U.S.C. §922(a)(6); §924(a) : False Information on Firearm Transaction Form]

The Grand Jury charges:

COUNTS ONE THROUGH ELEVEN
[18 U.S.C. §922(a)(6); §924(a)]

In the Central District of California, defendant DAVID PATRICK WILLIS, in connection with the acquisition of a firearm from a licensed dealer in firearms, on the date specified in each Count and from the licensed dealer specified in each Count as listed below, willfully and knowingly made a false and fictitious statement, likely to deceive such dealer with re-

spect to a material fact as to the lawfulness of the sale of such firearms pursuant to Chapter 44, Title 18, United States Code, in that defendant DAVID PATRICK WILLIS answered "no" to question 8b of Form 4473, which asked the question, "Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year?", knowing that he had been convicted of a felony, punishable by imprisonment for a term exceeding one year.

/

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LWC: ms

COUNT	DATE	LICENSED DEALER
ONE	September 9, 1971	Grants for Guns, Anaheim, CA
TWO	September 9, 1971	Grants for Guns, Anaheim, CA
THREE	December 29, 1971	Grants for Guns, Anaheim, CA
FOUR	December 29, 1971	Grants for Guns, Anaheim, CA
FIVE	February 25, 1972	Grants for Guns, Anaheim, CA
SIX	April 14, 1972	Grants for Guns, Anaheim, CA
SEVEN	April 14, 1972	Grants for Guns, Anaheim, CA
EIGHT	April 21, 1972	Grants for Guns, Anaheim, CA
NINE	July 10, 1972	Grants for Guns, Anaheim, CA
TEN	July 10, 1972	Grants for Guns, Anaheim, CA
ELEVEN	November 17, 1972	Grants for Guns, Anaheim, CA

A TRUE BILL

.....

Foreman

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WILLIAM D. KELLER
United States Attorney